

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 04-10075-PBS
	)	
MIGUEL IBARRA	)	

MOTION TO EXCLUDE EVIDENCE DUE TO VIOLATION  
OF LOCAL RULE 116.1 C(1) (b)

\_\_\_\_Defendant Miguel Ibarra moves that this Court exclude all evidence seized from (1) the home of Dimitrious Alexiou during a search conducted on February 14, 2003 and, (2) a black Lincoln Town Car alleged to be "registered to Miguel Ibarra" which was searched on or about January 31, 2003. As reason therefore, the government violated Local Rule 116.1 C(1)(b) by not providing discovery related to this evidence within 28 days of arraignment.

MEMORANDUM IN SUPPORT OF EXCLUSION OF EVIDENCE

Defendant was arraigned on April 8, 2004. Local Rule 116.1C(1)(b) requires that within 28 days of that date, the government provide;

Search Materials - A copy of any search warrant (with supporting application, affidavit and return) and a written description of any consent search or warrantless search (including an inventory of evidence seized):

- (I) which resulted in the seizure of evidence or led to the discovery of evidence that the government intends to offer as part of its case in chief; or

(ii) was obtained for or conducted of the defendants property, residence, place of business, or person in connection with the investigation of the charges contained in the indictment.

On February 15, 2005, defendant received a copy of the application, affidavit, search warrant and return for Alexiou's home. The first entry on the return list is "[a] box of personal checks in the name of Miguel Ibarra ... was obtained from the living room." (Attached as Exhibit 1).

Also on February 15, 2005, defendant received a copy of an affidavit in support of a search warrant for one of Alexiou's mobile telephones in which a government agent stated that an "inventory search" was conducted of a black Lincoln Town Car which was occupied by Lecotte Thompson who was "safe-guarding the drug purchase money" during the controlled purchase of 10 kilograms of cocaine by Alexiou. (Relevant page attached as Exhibit 2). Previously provided discovery says that this black Lincoln was registered to Miguel Ibarra. Defendant has not received a written description of the warrantless search of this vehicle including an inventory of the items seized. Local Rule 116.1C(1)(b). In preparation for this trial, defendant's counsel asked to view the evidence seized in the case of United States v. Alexiou, Criminal No. 03-10049-PBS. During that examination on February 15, 2005, defendant's counsel observed another box of personal checks in the name of Miguel Ibarra. When asked, a

government agent stated that they were seized from inside an envelope which was located in the trunk of the black Lincoln.

Local Rule 116.1(C) (1) (b) explicitly states that search materials must be automatically provided within 28 days. Said disclosure is required so that the defendant has the opportunity to both know the details of the search and the evidence that was recovered, and to evaluate the legality of the search and seizure in order to timely file motions to suppress.

Defendant requests a hearing on this motion.

MIGUEL IBARRA  
By his attorney,

/s/ Catherine K. Byrne

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Date: March 2, 2005